

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1991

H. DOUGLAS MILLER and DANENE R. MILLER, individually  
and as conservator(s) of LAURA K. MILLER, LINDY L.  
MILLER and CLINT T. MILLER, minors, *et al.*,  
Petitioners,  
v.

CAMPBELL COUNTY, WYOMING; BOARD OF COUNTY COM-  
MISSIONERS OF THE COUNTY OF CAMPBELL, BILL BARK-  
LEY, THOMAS OSTLUND and MICKEY WAGENSEN; CAMP-  
BELL COUNTY SHERIFFS' DEPARTMENT, CAMPBELL COUNTY  
HEALTH DEPARTMENT, CAMPBELL COUNTY EN-  
GINEERS' OFFICE, CAMPBELL COUNTY FIRE BOARD, and  
CAMPBELL COUNTY EMERGENCY SERVICES AGENCY,  
Respondents.

On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Tenth Circuit

**RESPONDENTS' BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI**

JOHN B. SPEIGHT  
RICHARD J. BARRETT  
RICK A. THOMPSON \*  
HATHAWAY, SPEIGHT, KUNZ,  
TRAUTWEIN & BARRETT  
P. O. Box 1208  
Cheyenne, WY 82003-1208  
(307) 634-7723  
*Attorneys for Respondents*  
\* Counsel of Record

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
ARGUMENT .....	7
I. THE PLAINTIFFS' ARGUMENT THAT THEIR DUE PROCESS CLAIMS ARE NOT ENCOMPASSED WITHIN THEIR MORE PRECISE TAKING CLAIM IS MOOT SINCE THE LOWER COURTS SPECIFICALLY FOUND NO DUE PROCESS VIOLATIONS....	7
II. EVEN IF A VIABLE DUE PROCESS CLAIM COULD HAVE BEEN SHOWN TO EXIST, THE TENTH CIRCUIT COURT OF APPEALS CORRECTLY HELD THAT SUCH A CLAIM IN THIS PARTICULAR CASE IS ENCOM- PASSED WITHIN THE MORE PRECISE CLAIM BASED ON THE JUST COMPENSA- TION CLAUSE .....	10
CONCLUSION .....	16

## TABLE OF AUTHORITIES

CASES:	Page
<i>Baker v. McCollan</i> , 443 U.S. 137, 61 L.Ed.2d 433, 99 S.Ct. 2689 (1979) .....	11
<i>Berry v. City of Muskogee</i> , 900 F.2d 1493 (10th Cir. 1990) .....	12
<i>Boddie v. Connecticut</i> , 401 U.S. 371 (1971) .....	8
<i>Crooked Lake Development, Inc. v. Emmet County</i> , 763 F.Supp. 1398 (W.D. Mich. 1991) .....	12
<i>Graham v. Connor</i> , 490 U.S. 386 (1989), 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989) .....	11, 12, 13, 14, 15
<i>Hodel v. Virginia Surface Mining and Recl. Ass'n</i> , 452 U.S. 264 (1981) .....	8
<i>Kirby Forest Industries v. United States</i> , 467 U.S. 1 (1984) .....	14
<i>Parratt v. Taylor</i> , 451 U.S. 527 (1981), <i>overruled on other grounds by Daniels v. Williams</i> , 474 U.S. 327 .....	8
<i>Schroeder v. City of Chicago</i> , 927 F.2d 957 (7th Cir. 1991) .....	12
<i>Sinaloa Lake Owners Ass'n v. City of Simi Valley</i> , 882 F.2d 1398 (9th Cir. 1989), <i>cert. denied</i> , 110 S.Ct. 1317 (1990) .....	13, 14, 15
<i>Tennessee v. Garner</i> , 471 U.S. 1, 85 L.Ed.2d 1, 105 S.Ct. 1694 (1985) .....	11
<i>Walker v. Norris</i> , 917 F.2d 1449 (6th Cir. 1990) .....	12
<i>Whitley v. Albers</i> , 475 U.S. 312, 89 L.Ed.2d 251, 106 S.Ct. 1078 (1986) .....	11, 13
<i>Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City</i> , 473 U.S. 172, 194-197, 87 L.Ed.2d 126, 105 S.Ct. 3108 (1985) .....	7, 8
OTHER AUTHORITIES:	
U.S. Constitution, Amendment IV .....	11, 13
U.S. Constitution, Amendment V .....	6, 7, 8, 10, 13
U.S. Constitution, Amendment VIII .....	11
U.S. Constitution, Amendment XIV .....	6, 7, 10, 11, 12, 13
Wyoming Statute § 19-5-101 (1977) .....	2

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1991

---

No. 91-1028

---

H. DOUGLAS MILLER and DANENE R. MILLER, individually and as conservator(s) of LAURA K. MILLER, LINDY L. MILLER and CLINT T. MILLER, minors, *et al.*,

*Petitioners,*

v.

CAMPBELL COUNTY, WYOMING; BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CAMPBELL, BILL BARKLEY, THOMAS OSTLUND and MICKEY WAGENSEN; CAMPBELL COUNTY SHERIFFS' DEPARTMENT, CAMPBELL COUNTY HEALTH DEPARTMENT, CAMPBELL COUNTY ENGINEERS' OFFICE, CAMPBELL COUNTY FIRE BOARD, and CAMPBELL COUNTY EMERGENCY SERVICES AGENCY,

*Respondents.*

---

**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Tenth Circuit**

---

**RESPONDENTS' BRIEF IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI**

---

**STATEMENT OF THE CASE**

The plaintiffs in this case were residents of a subdivision known as the Rawhide Village Subdivision located in Campbell County, Wyoming. The subdivision is located adjacent to a large, open-pit coal mine owned and

operated by Amax Coal Company. In February of 1987, methane and hydrogen sulfide gases were discovered seeping from the ground in the southern end of the subdivision.<sup>1</sup>

In an effort to address the eminent health and safety threat to the families living in Rawhide Village, the Campbell County Commissioners immediately called in experts from the U.S. Environmental Protection Agency, Wyoming Department of Environmental Quality, the Federal Emergency Management Agency, the State Office of Emergency Management, the Wyoming Health Department, the Campbell County Public Health Department, and the Campbell County Fire Department. In addition, the Campbell County Commissioners hired private consultants to conduct drilling and testing of gas concentration levels in the subdivision. The testing confirmed the surface seepage of methane and hydrogen sulfide gases from coal seams beneath the subdivision.

On February 25 and 26, 1987, the Campbell County Commissioners held a public Special Meeting and issued an order for temporary evacuation of nine homes in the subdivision.<sup>2</sup> In the following months, the county continued to have testing and monitoring done at the subdivision to determine the nature, cause and extent of the gas seepage problem in order to assess the hazards to the residents posed by the gases. On March 7, 1987, a public Special

---

<sup>1</sup> Deposition testimony filed in this case revealed that in February 1987, residents of the subdivision discovered they could light the cracks in the streets of the subdivision on fire and that the cracks would continue to burn as a result of the volume of the seepage of flammable gas from underneath the subdivision. (Deposition of Campbell County Commissioner Bill Barkley, November 30, 1988, pp. 7-8, 49-50; Deposition of Campbell County Commissioner Mickey Wagensen, November 29, 1988, p. 106.)

<sup>2</sup> The evacuation orders were issued by Campbell County under the authority of the Wyoming Disaster and Civil Defense Act, Wyoming Statutes §§ 19-5-101, *et seq.* (1977).

Meeting of the Campbell County Commissioners was held. Following a "lengthy discussion" of the issues with the Rawhide residents, the county commissioners issued a temporary evacuation order for an additional 22 homes in the subdivision for the purpose of protecting the public health and safety. [App. at 1a] Later, on March 26, 1987, a public Special Meeting was held by the Campbell County Commissioners and all but seven of the 31 displaced homeowners were allowed to return to their homes. [App. at 2a-9a]

By the end of May 1987, the county had received numerous complaints of medical problems and illnesses from residents in the subdivision. [App. at 12a] In addition, the County Health Officer, Dr. George B. McMurtrey, sent a letter to the Governor of Wyoming suggesting that he declare the subdivision a disaster area based partly upon "information he had received from primary care physicians related to specific health problems within Rawhide Village subdivision." [App. at 10a-11a]

On Friday, May 29, 1987, the county commissioners received a report from a local physician confirming that he had diagnosed two cases of hydrogen sulfide poisoning by residents of the Rawhide Village Subdivision. As a result of this compelling medical information, the county commissioners called a public Emergency Meeting. At the May 29, 1987 Emergency Meeting, the county commissioners passed a resolution declaring the subdivision uninhabitable. The commissioners decided to wait until the following regular weekly public meeting on June 2, 1987, to make a final decision as to the timetable they would adopt for evacuation of the subdivision. [App. at 14a]

The June 2, 1987 meeting was adjourned from the commissioner's regular hearing room and reconvened at a local junior high school gymnasium to provide adequate space to accommodate the residents so they could attend

and be heard at the public meeting.<sup>3</sup> At the conclusion of the public commission meeting on June 2, 1987, the commissioners passed a resolution requiring that the subdivision be evacuated by July 31, 1987. [Petitioners' App. at 53a] The resolution also provided for alternate shelter in the form of rent assistance. On June 3, 1987, the county commissioners held another public meeting at a local school gymnasium to hear from the Rawhide Village residents, address their concerns and provide them with information [App. at 19a-22a]

On June 9, 1987, the Governor of the State of Wyoming issued a Proclamation, declaring the subdivision to be a disaster area, directing that aid and assistance would be rendered pursuant to state statutes and activating the State Emergency Operation Plan. [App. at 23a] The Governor of Wyoming also requested President Reagan to issue a disaster declaration for the Rawhide Village Subdivision so that assistance for the residents could be obtained through the Federal Emergency Management Agency (F.E.M.A.). The initial request for a presidential disaster declaration was denied on June 25, 1987. The denial by F.E.M.A. was based upon an investigation report issued by the Centers for Disease Control (C.D.C.) which indicated that a limited fire and explosion potential existed for a small cluster of homes in the subdivision. Although F.E.M.A. concluded that most of the subdivision was habitable at that time, a health assessment report attached to the C.D.C. report stated that:

Since there is insufficient data to determine the time/space development of the gas evolution at Rawhide Village, additional studies of the geology and subsurface gas movement would be necessary in order to determine the extent of the potential threat to human safety and health. Additional informa-

---

<sup>3</sup> Deposition of Campbell County Commissioner, Bill Barkley, November 30, 1988, p. 206.

tion is necessary to define whether the extent of contamination at Rawhide Village is expanding.

In early July 1987, the State of Wyoming Department of Environmental Quality was directed by the Governor's Office to conduct a drilling program in the subdivision. The purpose of that drilling program was to obtain additional scientific information to determine the extent of potential threat to human safety and health, and for the purpose of appealing the denial of the presidential disaster declaration so that federal assistance could be obtained for the residents. The testing confirmed that the entire subdivision "is underlain by near surface and subsurface concentrations of methane with a high to extremely high potential for ignition and/or explosion which could occur without warning."<sup>4</sup> [App. at 25a-27a]

As a result of the initial denial of assistance by F.E.M.A., on July 28, 1987, the county commissioners suspended the July 31 deadline for evacuation. However, the commissioners left intact that portion of the June 2 Resolution declaring the subdivision to be uninhabitable. [Petitioners' App. at 55a] Finally, on September 4, 1987, President Reagan declared the subdivision a disaster area, thereby paving the way for the disbursement of federal relief aid to the Rawhide residents.<sup>5</sup> [App. at 28a-29a]

The plaintiffs contend that the Rawhide Village Subdivision was not uninhabitable and therefore the defend-

---

<sup>4</sup> Letter from the Governor of the State of Wyoming to President Reagan dated July 31, 1987, requesting a major disaster declaration and transmitting results of the investigations of the methane and hydrogen sulfide gas releases at the Rawhide Village Subdivision conducted by the State of Wyoming.

<sup>5</sup> In addition, the United States Congress authorized the payment of funds from the Abandoned Mine Reclamation Fund in the amount of \$2,000,000 to be distributed to the residents. (Deposition of Campbell County Commissioner Thomas Ostlund, taken December 1, 1988, pp. 79-82, 159-160, 183.)

ants wrongly deprived them of their property in violation of the Constitution. Specifically, the plaintiffs contend that the evacuation Resolutions of May 29 and June 2, 1987, constituted a taking of their property without just compensation in violation of the Fifth Amendment as incorporated against the states through the Fourteenth Amendment. The plaintiffs also claim that their Fourteenth Amendment substantive and procedural due process rights were violated by the defendants' actions. The United States District Court for the District of Wyoming granted the defendants' motion for summary judgment and dismissed the plaintiffs' claim.<sup>6</sup> The United States Court of Appeals for the Tenth Circuit affirmed the District Court. The plaintiffs now seek the review of this Court by writ of certiorari.

---

<sup>6</sup> Prior to initiating this action, these plaintiffs also filed suit in the United States District Court for the District of Wyoming against Amax Coal Company, alleging that mining activities conducted by Amax, such as dewatering the mine, caused the methane and hydrogen sulfide gas to seep from the coal seams beneath the subdivision. *Miller et al. v. Amax Coal Company*, U.S.D.C. Wyo., Docket No. C87-0300J. Amax Coal Company was the owner and operator of the coal mine adjacent to the subdivision. That case was settled for an undisclosed amount of money on April 26, 1989. The Campbell County defendants have not been entitled to discover the amount of the settlement due to a confidentiality order entered by the district court in the *Amax* case at the request of the plaintiffs.

---

## ARGUMENT

### I. THE PLAINTIFFS' ARGUMENT THAT THEIR DUE PROCESS CLAIMS ARE NOT ENCOMPASSED WITHIN THEIR MORE PRECISE TAKING CLAIM IS MOOT SINCE THE LOWER COURTS SPECIFICALLY FOUND NO DUE PROCESS VIOLATIONS.

The plaintiffs sued their county government and county governmental officials claiming that the temporary evacuation of the Rawhide Village Subdivision constituted a taking of their property without just compensation in violation of their Fifth Amendment rights. The plaintiffs also alleged that their substantive and procedural due process rights under the Fourteenth Amendment were violated by the evacuation of the subdivision.

The United States District Court for the District of Wyoming entered summary judgment in favor of the defendants and dismissed the plaintiffs' taking claim on the grounds that such a Fifth Amendment claim is not ripe until the plaintiff has sought compensation through state procedures. The district court relied on this Court's ruling in *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-197, 87 L.Ed.2d 126, 105 S.Ct. 3108 (1985), wherein it was held that "if a state provides for an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." 473 U.S. at 195. The trial court found that the State of Wyoming has an inverse condemnation statute which provides an adequate procedure for seeking just compensation. Since the plaintiffs had not utilized the state's procedure for seeking just compensation, the trial court held that the plaintiffs' taking claim was premature.<sup>7</sup> [Petitioners' App. at 37a] The federal district

---

<sup>7</sup> Following the ruling of the Federal District Court for the District of Wyoming, the plaintiffs filed a lawsuit in Wyoming State District Court against these defendants seeking damages under the

court also held that the defendants' actions did not violate the plaintiffs' substantive or procedural due process rights. [Petitioners' App. at 37a]

The plaintiffs appealed the District Court's ruling to the United States Tenth Circuit Court of Appeals. The Tenth Circuit affirmed the district court's order. The appellate court agreed that the plaintiffs' Fifth Amendment taking claim was not ripe since the plaintiffs had not sought compensation for the alleged taking through state procedures. [Petitioners' App. at 5a] See *Williamson*, 473 U.S. 172, 194-197 (1985). The plaintiffs are not seeking this Court's review of the Tenth Circuit Court's ruling on the taking claim.

The Tenth Circuit also affirmed the district court's ruling that the plaintiffs' due process rights were not violated. [Petitioners' App. at 8a-10a] The plaintiffs are seeking this Court's review of that ruling.

With respect to the plaintiffs' procedural due process claims, the Tenth Circuit Court of Appeals noted that this Court has stated that "due process ordinarily requires an opportunity for 'some kind of hearing' prior to the deprivation of a significant property interest." *Hodel v. Virginia Surface Mining and Recl. Ass'n*, 452 U.S. 264, 299 (1981) (citing *Parratt v. Taylor*, 451 U.S. 527, 540 (1981) *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-331; *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971)).

The Tenth Circuit correctly pointed out that in this case the "plaintiffs had at least two opportunities to present their position orally to the county commissioners, and they had ample notice of the pending orders to vacate such that they could have made written submissions to the county commissioners had they so wished."

---

inverse condemnation statutes. That action is proceeding at this date. *Miller, et al. v. Campbell County, et al.*, Sixth Judicial District Court, State of Wyoming, Civil Action No. 17134.

[Petitioners' App. at 9a] The Circuit Court was referring to the fact that public hearings were held on June 2 and June 3, 1987, at local school gymnasiums. The residents of the Rawhide Village Subdivision were notified of the public meetings and were invited to attend so they could obtain information from governmental officials and experts and be heard on the issue of excavating the subdivision. Those hearings occurred prior to the time that mandatory evacuation was scheduled to occur, which was set for July 31, 1987. In addition to those two public hearings, the county commissioners held special meetings open to the public on February 26, March 7, March 26 and May 29, 1987, for the purpose of discussing health and safety issues and evacuations at the Rawhide Village Subdivision. [App. at 1a, 2a, 14a] The minutes of those meetings show that public comments were taken and that "lengthy discussions" with Rawhide Village homeowners occurred. Furthermore, the county commissioners held their regularly-scheduled weekly meetings every Tuesday. Those meetings were open to the public. Any member of the public who wished to be heard on any issue involving the county simply had to request to be put on the agenda. Some of the Rawhide Village homeowners did in fact utilize that process.<sup>8</sup> The Tenth Circuit correctly held that in this particular context, the plaintiffs were offered adequate procedural due process.

With respect to the issue of substantive due process, the trial court and the Tenth Circuit Court of Appeals both held that the plaintiffs' substantive due process rights were not violated. On that issue, the Tenth Circuit Court stated:

The defendants had an obvious need to act with considerable dispatch because of the potential danger to its citizens. The defendants' actions were reason-

---

<sup>8</sup> A copy of all of the minutes of the commission meetings are attached to the transcript of the deposition of Campbell County Commissioner Bill Barkley, taken November 30, 1988.

able and measured, with appropriate concern for the situation and the interests of all involved. We cannot say on this record that the defendants' actions were arbitrary, capricious and unreasonable. [Petitioners' App. at 9a-10a]

Since the Tenth Circuit found that there were no due process violations in this case, the issue of whether or not the plaintiffs' due process claims are encompassed with the more specific Just Compensation Clause is moot and inconsequential to the outcome of this case. For that reason, the plaintiffs' Petition for a Writ of Certiorari should be denied.

**II. EVEN IF A VIABLE DUE PROCESS CLAIM COULD HAVE BEEN SHOWN TO EXIST, THE TENTH CIRCUIT COURT OF APPEALS CORRECTLY HELD THAT SUCH A CLAIM IN THIS PARTICULAR CASE IS ENCOMPASSED WITHIN THE MORE PRECISE CLAIM BASED ON THE JUST COMPENSATION CLAUSE.**

In addition to invoking the Just Compensation Clause of the Fifth Amendment, the plaintiffs alleged that the defendants' actions violated their due process rights under the Fourteenth Amendment. Although the Tenth Circuit Court affirmed the district court's ruling that there were no due process violations in this case, the Tenth Circuit did discuss the relationship of the Fifth Amendment taking claims to the Fourteenth Amendment due process claims. The Tenth Circuit Court said:

Because the Just Compensation Clause of the Fifth Amendment imposes very specific obligations upon the government when it seeks to take private property, we are reluctant in the context of a factual situation that falls squarely within that clause to impose new and potentially inconsistent obligations upon the parties under the substantive or procedural components of the Due Process Clause. It is appropriate in this case to subsume the more generalized Fourteenth Amendment due process protections

within the more particularized protections of the Just Compensation Clause. The Supreme Court's decision in *Graham v. Connor*, 490 U.S. 386 (1989), supports our analysis. [Petitioners' App. at 6a]

In *Graham v. Connor*, 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989), this Court said, "The first inquiry in any § 1983 suit' is 'to isolate the precise constitutional violation with which the defendant is charged.'" "The validity of the claim must then be judged by reference to the specific constitutional standard which governs that right, . . . ." *Id.* at 490 U.S. 394, quoting *Baker v. McCollan*, 443 U.S. 137, 140, 61 L.Ed.2d 433, 99 S.Ct. 2689, 2692 (1979).

In *Graham*, the plaintiff accused law enforcement officials of using excessive force in an investigatory stop. He claimed that the excessive force used violated both the Fourth Amendment's prohibition against unreasonable search and seizure and his Fourteenth Amendment substantive due process rights. This Court rejected his Fourteenth Amendment claim stating that: "Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." *Graham*, 490 U.S. at 395. See also, *Whitley v. Albers*, 475 U.S. 312, 327, 89 L.Ed.2d 251, 106 S.Ct. 1078 (1986) (refusing to consider Fourteenth Amendment due process claim by prison inmate for excessive force because Eighth Amendment "serves as the primary source of substantive protection to convicted prisoners" in such cases); *Tennessee v. Garner*, 471 U.S. 1, 85 L.Ed.2d 1, 105 S.Ct. 1694 (1985) (claim of excessive force to effect an arrest analyzed solely by reference to Fourth Amendment standard rather than a generalized Fourteenth Amendment due process standard).

Although *Graham*, *Whitley* and *Garner* dealt with Fourth and Eighth Amendment claims, this Court's rea-

soning in those cases is equally applicable to this Fifth Amendment taking claim. Since the Just Compensation Clause provides "an explicit textual source of constitutional protection" for the type of taking claim alleged in this case, that clause, not the more generalized notion of due process, must be the guide for analyzing the plaintiffs' claims. As one lower court recently summarized the holding in *Graham*, "Where available, explicit constitutional guarantees offer a more concrete and therefore superior guide to judges than the generalized notion of substantive due process." *Crooked Lake Development, Inc. v. Emmet County*, 763 F.Supp. 1398, 1403 (W.D. Mich. 1991). See also, *Walker v. Norris*, 917 F.2d 1449, 1455 (6th Cir. 1990); *Berry v. City of Muskogee*, 900 F.2d 1493-94 (10th Cir. 1990); *Schroeder v. City of Chicago*, 927 F.2d 957 (7th Cir. 1991).

In *Schroeder*, *supra*, the Seventh Circuit discussed the contrast between analysis under the takings clause and analysis under the more generalized concept of substantive due process. In that case, a former fire fighter brought a § 1983 suit complaining about a delay in receipt of disability benefits. Although the *Schroeder* court found that the plaintiff's claim did not fall within the boundaries of the taking clause, the circuit court did say:

This interpretation of the takings clause is attractive because it helps to domesticate the concept of substantive due process, whose tendency to formlessness has been blamed for a host of usurpative decisions . . . . Narrowly viewed—saved from total formlessness without being completely extinguished—'substantive due process' refers to the incorporation into the due process clause of rights found elsewhere in the Constitution. The principal example is the incorporation of most of the Bill of Rights into the due process clause of the Fourteenth Amendment, making them rights against state as well as federal action.

\* \* \* \*

The [Supreme] Court's preference for tethering substantive due process claims to specific provisions in the Bill of Rights is illustrated by its recent decision that complaints about excessive force in arrests are to be judged by the standards of the Fourth Amendment, not by some free-wheeling concept of outrageous governmental conduct. *Schroeder*, 927 F.2d at 961, citing *Graham v. Connor*, *supra*.

The Tenth Circuit's holding in the case at bar is supported by this Court's decisions in *Graham* and *Whitley*. On the other hand, the plaintiffs seek support from the Ninth Circuit case of *Sinaloa Lake Owners Ass'n v. City of Simi Valley*, 882 F.2d 1398 (9th Cir. 1989), cert. denied, 110 S.Ct. 1317 (1990). In *Sinaloa Lake*, the plaintiffs alleged that their privately-owned dam and lake was destroyed by California authorities in violation of the Fifth Amendment, as well as their substantive and procedural due process rights under the Fourteenth Amendment Due Process Clause. The Ninth Circuit dismissed the plaintiffs' takings claim as being unripe, but held that the plaintiffs procedural and substantive due process claims were viable. In *Sinaloa Lake*, the defendants breached the plaintiffs' dam and destroyed the lake *without affording the plaintiffs notice and opportunity for a hearing* prior to the destruction of the lake. In fact, the plaintiffs did not even learn of the decision to breach the dam until a few hours before contractors were scheduled to begin breaching the dam. In that case, it was clear that there was no need for prompt action by the defendants. Although the defendants claimed that it was necessary to breach the dam to avoid disastrous flooding caused by heavy rains, the lake was well below the high water mark when the dam was breached. The dam was breached and the lake was destroyed more than a week after the rain had subsided, the high waters had receded, and the emergency was over. At the date the defendants began to breach the dam, the water level was down 22 feet. *Sinaloa Lake*, *supra*, 882 F.2d 1401.

Unlike *Sinaloa Lake*, the hazardous situation at the Rawhide Village Subdivision had not subsided. Dangerous methane and hydrogen sulfide gases continued to seep up from the ground in and around the subdivision. At the time of enacting the June 2, 1987 evacuation Resolution, the county commissioners had received information and reports from local physicians confirming specific illnesses contracted by residents of the Rawhide Village Subdivision, including two diagnosed cases of hydrogen sulfide poisoning. However, a more important distinguishing difference exists between *Sinaloa Lake* and this case. In this case, the defendants were afforded *ample notice and opportunity to be heard* well in advance of the date set for mandatory evacuation of the subdivision.<sup>9</sup> Several public hearings and meetings were held by the Campbell County Commissioners. Unlike the Ninth Circuit's finding in *Sinaloa Lake*, the finding of the Tenth Circuit Court of Appeals and the Wyoming Federal District Court was that no due process violations occurred in this case. The Tenth Circuit was correct when it said that, "Because the facts of that case [*Sinaloa Lake*] are so different from the facts of this case, we cannot say that we are in conflict with *Sinaloa Lake*. All that can be said is that under the facts of our case we conclude that the Just Compensation analysis is controlling, whereas in *Sinaloa Lake* the Ninth Circuit felt that the conduct there went beyond the penumbra of the Just Compensation Clause." [Petitioners' App. at 7a-8a]

In *Sinaloa Lake*, the Ninth Circuit attempted to distinguish this Court's decision in *Graham*. The Ninth Circuit said:

*Graham* does not, however, bar substantive due process analysis altogether. A plaintiff may still

---

<sup>9</sup> As the Tenth Circuit held, "The taking did not occur when the resolutions were adopted; rather the taking occurred when the plaintiffs were actually required permanently to vacate their premises. See, *Kirby Forest Industries v. United States*, 467 U.S. 1 (1984)." [Petitioners' App. at 9a]

state a claim for violation of substantive due process where it is alleged that the government has used its power in an abusive, irrational or malicious way in a setting *not encompassed by some other enumerated right*. *Sinaloa Lake*, 882 F.2d 1408-09, note 10 (emphasis added).

In the case at bar, the plaintiffs' due process claims are "encompassed by some other enumerated right," namely, the Just Compensation Clause. Since the Just Compensation Clause more precisely applies in this case and "encompasses" the plaintiffs' due process claims, the Tenth Circuit's decision is not in conflict with *Sinaloa Lake*.

It should be further noted that the Tenth Circuit's holding in this case is limited to the facts of *this* case. The Tenth Circuit made that clear when it said:

We need not address whether a taking might ever violate substantive or procedural due process without violating the Just Compensation Clause. We only hold that there is nothing in this record that would warrant a separate due process analysis over and above a consideration of the plaintiffs' more precise claims based on the Just Compensation Clause. [Petitioners' App. at 6a]

Based upon the specific and unique facts of this case, the ruling of the Tenth Circuit Court of Appeals is not in conflict with the Ninth Circuit's decision in *Sinaloa Lake*. The analysis of the Tenth Circuit is in line with this Court's decision in *Graham*. The Tenth Circuit's limited holding, which is restricted to the facts of this case, does not set any precedent or raise any issues noteworthy of this Court's review. Accordingly, the plaintiffs' Petition for Writ of Certiorari should be denied.

**CONCLUSION**

For the reasons set forth above, the defendants respectfully request this Court to deny the plaintiffs' Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,

JOHN B. SPEIGHT  
RICHARD J. BARRETT  
RICK A. THOMPSON \*  
HATHAWAY, SPEIGHT, KUNZ,  
TRAUTWEIN & BARRETT  
P. O. Box 1208  
Cheyenne, WY 82003-1208  
(307) 634-7723  
*Attorneys for Respondents*  
\* Counsel of Record

# **APPENDIX**



**APPENDIX**

**SPECIAL MEETING**

**CAMPBELL COUNTY COMMISSIONERS**

**SATURDAY—MARCH 7, 1987**

**PRESENT:**

Mickey D. Wagensen, Acting Chairman  
Thomas A. Ostlund, Member  
John D. Young, County Attorney

**ABSENT:**

Bill L. Barkley, Chairman

1. **RAWHIDE VILLAGE SUBDIVISION**—Acting Chairman Mickey D. Wagensen called the Special meeting to order at 10:00 a.m. After lengthy discussion with homeowners of Rawhide Village Subdivision, Commissioner Ostlund moved to extend the emergency declaration to include 22 more homes and approve payment of \$400.00 to 17 homeowners. Motion seconded by Commissioner Wagensen. Commissioners Ostlund and Wagensen voted aye. Commissioner Barkley was counted absent in the vote. Motion carried by quorum vote of the Board.

Commissioner Ostlund moved to approve purchase of 14 gas monitors to be installed in homes determined by the County Engineer. Motion seconded by Commissioner Wagensen. Commissioner Ostlund and Wagensen voted aye. Commissioner Barkley was counted absent in the vote. Motion carried.

**THERE BEING NO FURTHER BUSINESS COMING BEFORE THE BOARD, THE MEETING ADJOURNED AT 11:30 a.m.**

SPECIAL MEETING  
CAMPBELL COUNTY COMMISSIONERS

THURSDAY—March 26, 1987

PRESENT:

Bill L. Barkley, Chairman  
Mickey D. Wagensen, Commissioner  
Thomas A. Ostlund, Commissioner  
John D. Young, County Attorney  
Byron F. Oedekoven, County Sheriff  
B. David Holland, Emergency Manager  
Charles Hartman, Assistant Commissioner  
Wyoming Department of Insurance  
Chester McKee, President, In-Situ  
Phil Gerhart, VP, In-Situ  
Suzanne Wuerthele, Toxicologist, EPA  
Jim Honn, Dept. Environmental Quality  
Mike Koopman, Dept. Environmental Quality

- I. OPENING STATEMENTS—A meeting was held at 7:00 p.m. with the above officials and Rawhide Village Homeowners. Bill L. Barkley, Chairman, Campbell County Commissioners, opened the meeting by laying the ground rules for questions by the homeowners.
- II. BACKGROUND—Next item of business was a short background of the problems and remedies that have occurred thus far at Rawhide Village.
- III. HEALTH ISSUES—Suzanne Wuerthele, Toxicologist, Environmental Protection Agency, then discussed the methane and hydrogen sulfide gases present in the subdivision. She advised that she had left printed information at the Campbell County Public Health Office which is available to the public. Dosage/exposure is a principal effect

of the gases. Ms. Wuerthele discussed the symptoms of methane and hydrogen sulfide gas poisoning. Symptoms for methane gas are headaches, dizziness, ataxia, unconsciousness; for hydrogen sulfide gas the symptoms are drunk acting, it is a powerful irritant and affects the throat, eyes and nose, also affects cellular respiration. Ms. Wuerthele then conducted a question and answer period.

IV. INSURANCE—Mr. Charles Hartman, Assistant Commissioner for the Wyoming Department of Insurance, answered questions from homeowners at this time. Hartman advised that he is one of three persons in the consumer complaint division, gave his address and telephone number and stated that his department would give any help they could with insurance policy problems.

V. RESEARCH REPORTS—Chester McKee, President of In-Situ, Inc. discussed the investigation they had conducted which included toxic gas measurements, test holes, soil gas mapping, geology, mine dewatering, water quality, air quality and blasting. McKee also gave their recommendations and conclusions from the draft report.

Phil Gerhart then explained how the various gas readings were taken and how they were read. Gerhart discussed the slide presentation.

VI. OPTIONS—Tom Ostlund, County Commissioner, discussed options and solutions for Rawhide Village residents.

- a. First option—do nothing.
- b. Continue to evaluate the problem.

Advantages: drill more test holes deeper and find out what is down there.

Disadvantages: cost, time, don't know if it will work.

## c. Technical remedy.

Advantages: dissipate the gases—flare.

## d. Partial relocation of residents.

Advantages: Some people can stay. Like where they live.

Disadvantages: no resale value, doesn't solve the problem, higher water/sewer bills.

## d. Relocate the entire subdivision.

Commissioner Ostlund also discussed the Personal Information questionnaire that was given to Rawhide residents to complete. The questionnaire was to give information on what the people want as far as mortgage buyout, mortgage forgiven by exchange, appraisal buyout or relocate your home with mortgage

VII. **POLICY**—Commissioner Barkley then discussed the policies that would be implemented for the various houses in Rawhide Village. Commissioner Barkley explained the monitoring program, the conditions for temporary relocation and continued funding.

The following letter was given to the residents at:

186 Salt Box Lane  
187 Salt Box Lane  
188 Salt Box Lane  
189 Salt Box Lane  
190 Salt Box Lane  
191 Salt Box Lane  
192 Salt Box Lane

On February 26, 1987, you were asked to leave your home by the Campbell County Commissioners. This request was based on the recommendation of the In-Situ, Inc., consultant hired by the county to investigate the gas problems occurring in the

Rawhide Village Subdivision. Due to the proximity of your home to the hydrogen sulfide well located at 190 Salt Box Lane, it was determined that for your safety it would be necessary to relocate you.

Continuous monitoring by the county of the problem in the Rawhide Subdivision indicates that there has been no noticeable change in the gas levels of homes presently occupied. However, the county still believes that there is a risk to your health and safety should you be allowed to return to your home. As such, you are still prohibited from returning to your residence.

For the month of April, the county will provide you the following assistance:

1. A rental payment in the amount of \$400.00; or
2. Relocate you in an alternate housing unit.

You will be informed by the county when alternate housing is located. Until that time, you should expect to receive the \$400.00 rent payment. If you need a rent check for the month of April, please stop by the County Commissioner's Office on Monday, March 30, 1987, to make arrangements for collecting the funds.

Up until this time, the Campbell County Sheriff's Department has provided the affected area with 24 hours security. Effective April 1, 1987, the Sheriff's Department will no longer have a deputy stationed around the clock. Your house will be placed on the Sheriff's Department house watch. Special attention and patrol will be given to Salt Box Lane. Further, the Sheriff's Office will assist you in setting up a Neighborhood Watch program. However, it is important to remember that you should take appropriate action to secure your home as it will no longer be watched 24 hours a day.

Should you have any questions regarding this matter, please do not hesitate to contact Emergency Manager David Holland at 682-2602.

Thank you in advance for your cooperation.

The following letter was hand delivered to residents at the addresses listed below:

12 Chief Court	193 Salt Box Lane
203 Salt Box Lane	194 Salt Box Lane
195 Salt Box Lane	196 Salt Box Lane
197 Salt Box Lane	198 Salt Box Lane
199 Salt Box Lane	200 Salt Box Lane
201 Salt Box Lane	202 Salt Box Lane
204 Salt Box Lane	205 Salt Box Lane
195 Sitting Bull	197 Sitting Bull
199 Sitting Bull	506 War Chant

On March 6, 1987, you were asked to leave your home by the Campbell County Commissioners. This request was based on the recommendation of the In-Situ, Inc., consultant hired by the county to investigate the gas problems occurring in the Rawhide Village Subdivision. Due to the high or constant methane gas reading in your house or in the soil immediately around your home, it was determined that for your safety it would be necessary to relocate you.

Continuous monitoring by the county of the problem in the Rawhide Subdivision indicates that there has been no noticeable change in the gas levels of homes presently occupied. As such, the county has determined that you will be permitted to return to your home should you choose to do so. However, three criteria must be met by you before you will be allowed to return. Those criteria are:

1. To revent the accumulation of gas in your home, you must install vents which meet the County Engineer's specifications.

2. Install gas detectors in your home. The county will assist you in obtaining the necessary monitors.
3. A letter of understanding must be signed by you that acknowledges you have been advised of the methane readings in your house and yard; that you are aware of the dangers associated with these readings and based on this information you the homeowner choose to return to your home.

Once you have met these criteria, you will be permitted to return to your home.

If you choose not to return to your home, then, at the discretion of the County Commissioners, the county will provide you, for the month of April, with the following assistance:

1. A rental payment in the amount of \$400.00; or
2. Relocate you in an alternate housing unit.

You will be informed by the county when alternate housing is located. Until that time, you should expect to receive the \$400.00 rent payment. If you need a rent check for the month of April, please stop by the County Commissioner's Office on Monday, March 30, 1987, to make arrangements for collecting the funds.

Up until this time, the Campbell County Sheriff's Department has provided the affected area with 24 hour security. Effective April 1, 1987, the Sheriff's Department will no longer have a deputy stationed around the clock. You should contact the Sheriff's Department to have your house placed on the Department's house watch. Special attention and patrol will be given to Salt Box Lane. Further, the Sheriff's Office will assist you in setting up a Neighborhood Watch program. However,

it is important to remember that you should take appropriate action to secure your home as it will no longer be watched 24 hours a day.

Should you have any questions regarding this matter, please do not hesitate to contact Emergency Manager David Holland at 682-2602.

Thank you in advance for your cooperation.

The third letter set out below, was delivered to residents designated as "blue or green" listed below:

206 Salt Box Lane  
207 Salt Box Lane  
209 Salt Box Lane  
196 Sitting Bull  
198 Sitting Bull  
504 Warchant

On March 6, 1987, you were asked to leave your home by the Campbell County Commissioners. This request was based on the recommendation of the In-Situ, Inc., consultant hired by the county to investigate the gas problems occurring in the Rawhide Village Subdivision. You were requested to move out of your home because it was adjacent to a home that:

1. Had a high or constant gas reading in the home; or
2. Was located next to property that had high readings of methane gas levels in the soil.

This action was taken on a short-term basis to insure your safety while additional data could be collected. For the past six weeks, monitoring of occupied homes in the Rawhide Subdivision has shown no noticeable levels of gas in the homes. Based on this information, we have determined that you can be allowed to return to your home.

If you decide to return to your home, the county will provide you a gas detector at your request. The county will no longer provide financial assistance. The choice is yours as to whether or not you wish to return to your home.

Commissioner Wagensen moved to adopt the resolutions as we have presented them to the people and as further defined in the letters given out and to approve the installation of the soil gas monitors in the perimeter areas. Motion seconded by Commissioner Ostlund. All members of the Board voted aye. Motion carried.

THERE BEING NO FURTHER BUSINESS COMING BEFORE THE BOARD, THE MEETING ADJOURNED.

CAMPBELL COUNTY HEALTH DEPARTMENT  
George McMurtrey, M.D. Health Officer  
416 West Juniper Lane  
P.O. Box 3420  
Gillette, Wyoming 82716  
Telephone: (307) 682-7275

April 29, 1987

The Honorable Mike Sullivan, Governor  
State of Wyoming  
State Capitol Building  
Cheyenne, WY 82002

Dear Governor Sullivan:

At the request of the Campbell County Commissioners, Mr. Bill Barkley, Chairman, I have carefully reviewed all available information related to the on going problems within the Rawhide Village sub-division, which is located in Campbell County, Wyoming. Specifically, I have been aware of the present and potential health hazards within the sub-division since first having these problems called to my attention in February 1987.

Continued observation of the problems as they presented and gradually increased in scope; careful review of the available scientific literature, including both medical and toxicological articles concerning the present and potential health hazards relative to the continuous presence of methane gas and hydrogen sulfide gas in the environment; information from primary care physicians related to specific health problems within the Rawhide Village sub-division; and continuing information from gas monitoring systems, which have been in place since the problem was first recognized, form the basis for my conclusions regarding the present and potential health hazards within the sub-division. It is my opinion, therefore, that a clear and present danger to the public health

as well as potential health hazards, which are difficult to ascertain with certainty, exists in the area.

It is my recommendation, therefore, in view of both the present and potential health hazards resulting from the continuous release of these toxic substances in the area, that the entire Rawhide Village sub-division be declared a disaster area, and further recommend that the designation be lifted only when it can be clearly ascertained that no further hazard exists.

Sincerely yours,

/s/ George B. McMurtrey, M.D.  
GEORGE B. McMURTREY, M.D.  
County Health Officer  
Campbell County, Wyoming

GM/pk

cc: Campbell Co. Commissioners  
file

CAMPBELL COUNTY HEALTH DEPARTMENT  
Division of Public Health Nursing Service

(307) 682-7275  
416 West Juniper Lane

P.O. Box 3420  
Gillette, Wyoming 82716

May 19, 1987

The Honorable Mike Sullivan, Governor  
State of Wyoming  
State Capitol Building  
Cheyenne, WY 82002

Dear Governor Sullivan:

The Campbell County Board of County Commissioners has requested I share with you the health related problems experienced by individuals of the Rawhide Village sub-division.

This agency has received numerous calls and inquiries regarding health concerns related to exposure to methane gas and hydrogen sulfide. Individuals with compromised respiratory systems state they are able to breath better away from the sub-division; others have experienced respiratory illness, eye soreness, rashes, headaches, acute illness and other problems which could be associated with the affects of exposure to the gases.

I have discussed the health problems associated with methane gas and hydrogen sulfide with toxicologists from the Center of Disease Control in Atlanta, Georgia; the regional office in Denver, Colorado and the E.P.A. toxicologist in Denver, Colorado as well as the local health officer, George McMurtrey, M.D. and state officials. All of these symptoms presented may be present with exposure to the gases to the point of fatality with high concentrations of the gases.

Because the Rawhide gas problem is not correctable in the foreseeable future and these individuals continue to

be at risk for health and safety, it is my recommendation the entire Rawhide Village sub-division be declared a disaster area.

Sincerely yours,

/s/ Nola Wallace, R.N.  
NOLA WALLACE, R.N., Director  
Public Health Nursing Service  
Campbell County

cc: Campbell Co. Commissioners  
County Health Officer  
Director of State Nursing Services  
file

EMERGENCY MEETING

CAMPBELL COUNTY BOARD OF COMMISSIONERS

FRIDAY—May 29, 1987

PRESENT:

Bill L. Barkley, Chairman  
Mickey D. Wagensen, Member  
Thomas A. Ostlund, Member  
George McMurtrey, C.Co. Health Officer  
Byron Oedekoven, C.Co. Sheriff  
Russ Hansen, Deputy County Attorney  
Chuck Costanza, County Engineer's Office  
Leta Tanner, Senator Simpson's Office  
Teresa Blackford, Deputy County Clerk  
Carma Harston, C.Co. Council of Community Services  
Bob Kuchera, D-PASS

Homeowners: Linda Pfeil  
Ray Miller  
Ron Pickar

Media: David King—KIML  
Mary Banks—News Record  
Peggy Walsh-Sarneke—RC Journal  
Misty Barber—KOLL  
Sherri Jo—Y100

Carol J. Ross, Administrative Assistant  
Mitch Maycock  
Sherri McGrath

Chairman Barkley called the meeting to order at 3:00 p.m. and read the following resolution:

RESOLUTION

BE IT RESOLVED by the Board of County Commissioners, Campbell County, Wyoming, this 29th day of May, 1987, that after extensive discussions with the Campbell County Public Health officer, reports and indi-

cated diagnosis given by the medical community, increasing readings under the gas monitoring program, advise from the Campbell County Fire Department and pursuant to the authorities provided by Wyoming Statute Section 18-3-501 et seq. (1977 as amended), Wyoming Statute Section 19-5-101 et seq. (1977 as amended), Wyoming Statute Section 35-1-301 et seq. (1977 as amended) and Wyoming Statute Section 35-4-101 through 35-4-105 (1977 as amended), it is the conclusion of this Board that the areas encompassing the Rawhide Village subdivision and the Horizon subdivision should be and the same are hereby declared uninhabitable for human habitation. Evacuation is ordered and needs to be accomplished as soon as possible. The following steps are being implemented to facilitate the action taken:

1. A time frame for forced evacuation will be considered in the regular commission meeting to be held June 2, 1987. An "assumption of risk" acknowledgement will then be required from residents still in the affected homes.

2. The County Commissioners have arranged for temporary lodging for displaced families at motels listed below. The motels will need a copy of this resolution with the Rawhide or Horizon address written on it along with proof of identity when the family registeres. The provision is for one double room, or single room if appropriate, and the motel lodging will extend for not more than thirty (30) days. Participating motels are named as follows:

Ramada	Arrowhead
Sands	Super 8
Econo Lodge	Rolling Hills
Prime Rate	Circle L

Approved and Adopted this 29th day of May, 1987, by the Board of County Commissioners, Bill Barkley, Tom Ostlund, Mickey Wagensen and by Dr. George McMurtrey, Campbell County Public Health Officer.

Chairman Barkley—I would accept a motion to adopt the Resolution. Commissioner Ostlund moved to adopt the Resolution. Commissioner Wagensen seconded the motion.

Chairman Barkley—It has been moved and seconded to adopt the Resolution as presented, is there any discussion? Any discussion?

Deputy County Attorney, Russ Hansen, stated that before you go ahead and vote you might just discuss a little bit some of the facts we have received that has given rise to your response so that it is clear that it has been a considered decision before you vote.

Chairman Barkley—We have received knowledge in the last couple of days that there has been cases of H<sub>2</sub>S poisoning in Rawhide Village that's been diagnosed by one of the local physicians. Dr. McMurtrey has confirmed those and has accepted the medical expertise of one of his cohorts. We have knowledge of readings of methane in the north end of the subdivision that have increased in recent days. We are in the process of confirming that right now. We feel that there is certainly adequate support now to do what we have done. We have notified all the proper authorities, the Governor's office, the Congressional delegation, D-Pass, Red Cross, realtors, I think I have probably missed some, but we have tried to make everybody aware of the situation. The resolution is in the process of being hand delivered to all the residents; they will hopefully have it in hand prior to the news releases that will soon be coming out. Is there any other discussion?

David King—This is the entire subdivision? And Horizon?

Chairman Barkley—Yes.

David King—How many families?

Chairman Barkley—We are assuming, David, around 170 families.

King—Some cases of H<sub>2</sub>S poisoning?

Chairman Barkley—I think we have 2—Is that right Doctor?

Dr. McMurtrey—We definitely know of two, the whole medical community has become aware of the problem and I, in fact, was just on the phone to one of the internist who described at least two cases which was diagnoses as H<sub>2</sub>S poisoning and I'm sure there are others. Additional physicians have also contacted me because of these problems—inaudible—suffered severe urinary infection along with dizziness, headaches, respiratory irritation, severe enough that his physician ordered him out of there and ordered him not to go back. Another one was a lady with similar problems—inaudible—

Commissioner Wagensen—We are hoping to get some help from the State on this too and certainly they have indicated a willingness to help us any way they can. They do need to take this paper with them to the motel, it has to be signed and their address has to be on it or they're not going to get a room. And they need to carry this piece of paper with them so that when they want back into their home out there, security will realize who they are and let them back in.

Inaudible

Chairman Barkley—The Sheriff's Office and the Wyoming Highway Patrol are in conjunction putting together a program, we don't know what that will all entail at this point. I would like to call for the vote. Would you read the motion please?

Mrs. Ross—Commissioner Ostlund moved to approve the Resolution as presented. Motion seconded by Commissioner Wagensen.

Chairman Barkley—All those in favor signify by saying aye.

Ayes: Commissioner Wagensen  
Commissioner Ostlund  
Chairman Barkley

Opposed same sign. None

Motion carried unanimously

Now if there are other questions, we will continue with that—if there is no other business to come before this special session of the County Commissioners, the meeting will be adjourned.

Meeting adjourned at 3:09 p.m.

AGENDA

RAWHIDE SUBDIVISION

WEDNESDAY—June 3, 1987

7:00-7:10 INTRODUCTION

7:10-7:15 INTRODUCTION OF HEAD TABLE

7:15-7:25 GOVERNOR OFFICE

7:25-8:15 MORTGAGE GROUPS

8:15-8:30 OVERVIEW EMERGENCY MANAGEMENT

8:30-8:35 SHERIFF'S OFFICE

8:35-9:00 QUESTIONS & ANSWERS

CAMPBELL COUNTY COMMISSIONERS

Bill L. Barkley, Chairman  
Mickey D. Wagensen, Member  
Thomas A. Ostlund, Member  
Office—682-7283

GOVERNOR SULLIVAN'S OFFICE

Nancy Freudenthal, Attorney  
Office—777-7434

VETERANS ADMINISTRATION (VA)

Donald M. Twitty, Director—(303) 980-2800  
W. Jack Brahler, Ass't Loan Guaranty Officer—  
(303) 980-2660

FARMERS HOME ADMINISTRATION (FmHA)

Michael F. Ormsby, State Director—(307) 261-5271  
Jim Wiseman, Housing Chief—(307) 261-5143

US DEPARTMENT OF HOUSING & URBAN  
DEVELOPMENT

Mary J. Bleecher, Loan Servicing Representative—  
(303) 844-3929  
John J. Endres, Real Estate Broker—(303) 844-4959  
E. "Angelo" Michael—(303) 844-3112  
Jerry D. Keeton, Supervisory Realty Specialist—  
(303) 844-3137

FEDERAL EMERGENCY MANAGEMENT AGENCY

David P. Grier IV—(303) 235-4900

STATE EMERGENCY MANAGEMENT AGENCY

Edwin Usui, Coordinator—(307) 777-7566

DEPARTMENT OF ENVIRONMENTAL QUALITY

Jim Honn—Land Quality Division—(307) 777-7756  
Mike Koopman—Land Quality Division—777-7756

CAMPBELL COUNTY COMMISSIONERS

Bill L. Barkley, Chairman  
Mickey D. Wagensen, Member  
Thomas A. Ostlund, Member

GOVERNOR SULLIVAN'S OFFICE

Nancy Freudenthal, Attorney

VETERANS ADMINISTRATION (VA)

Donald M. Twitty, Director  
W. Jack Brahler, Ass't Loan Guaranty Officer

FARMERS HOME ADMINISTRATION (FmHA)

Michael F. Ormsby, State Director  
Jime Wiseman, Housing Chief

US DEPARTMENT OF HOUSING & URBAN  
DEVELOPMENT

Mary J. Bléecher, Loan Servicing Representative  
John J. Endres, Real Estate Broker  
E. "Angelo" Michael  
Jerry D. Keeton, Supervisory Realty Specialist

FEDERAL EMERGENCY MANAGEMENT AGENCY

David P. Grier IV

STATE EMERGENCY MANAGEMENT AGENCY

Edwin Usui, Coordinator

CAMPBELL COUNTY EMERGENCY MANAGEMENT

Donald Holland, Acting Manager

DIVISION OF HEALTH AND MEDICAL SERVICES  
—STATE OF WYOMING

R. Larry Meuli, M.D., Administrator

CAMPBELL COUNTY PUBLIC HEALTH NURSE

Nola Wallace, R.N.

DEPARTMENT OF ENVIRONMENTAL QUALITY—  
Land Quality Division

Jim Honn

Mike Koopman

CAMPBELL COUNTY SHERIFF

Byron Oedekoven

## PROCLAMATION

WHEREAS, since at least February 10, 1987, dangerous surface seepage of methane and hydrogen sulfide gases has presented threats to the health and safety of Rawhide Village and Horizon Subdivision residents in Campbell County, Wyoming; and

WHEREAS, the threats were considered to be immediate by Campbell County's Board of County Commissioners; and

WHEREAS, the Board of County Commissioners, on June 2, 1987, issued a Resolution which declared the Rawhide Village and Horizon Subdivision as uninhabitable, and further resolved that no further occupation of the area shall be allowed from and after July 31, 1987;

NOW, THEREFORE, pursuant to the authority vested in the Office of the Governor of the State of Wyoming, I hereby declare the following, effective June 3, 1987:

1. that a disaster exists as a result of Campbell County's Resolution;
2. the impacted area shall be rendered aid and assistance pursuant to the provisions of State statutes; and
3. the State Emergency Operations Plan is activated.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wyoming to be affixed this 9th day of June, 1987.

/s/ Mike Sullivan  
MIKE SULLIVAN  
Governor

ATTEST:

Secretary of State

[State of Wyoming Seal]

RAWHIDE VILLAGE/HORIZON SUBDIVISION  
APPEAL

OFFICE OF THE GOVERNOR  
STATE OF WYOMING

[State of Wyoming Seal]

STATE OF WYOMING  
OFFICE OF THE GOVERNOR  
CHEYENNE 82002

July 31, 1987

The Honorable Ronald Reagan  
The President  
The White House  
Washington, D.C., 20500

Through: Alton D. Cook, Regional Director  
Federal Emergency Management Agency  
Region VIII  
Denver, Colorado 80225-0267

Dear Mr. President:

Under the provisions of 44 CFR, Chapter 1, Subchapter D, Subpart C, Section 205.38, I would like to appeal your declination of my request dated June 9, 1987, for a major disaster declaration in the Rawhide Village/Horizon Subdivision of Gillette in Campbell County, Wyoming.

In the declination it was stated that a major disaster declaration was not warranted because "The severity and magnitude of this situation are not considered to be beyond the response capabilities of the State of Wyoming and its affected local governments, as required by law."

Since my initial request additional field and laboratory investigations of the methane and hydrogen sulfide gas releases have been conducted by the Wyoming Department of Environmental Quality and the Geological Survey of Wyoming. Results are contained in the attached report. It has been concluded that the entire area in

question is underlain by near surface and subsurface concentrations of methane with a high to extremely high potential for ignition and/or explosion which could occur without warning. Indeed, in 1984 two earthquakes measuring over 5.0 on the Richter Scale were experienced in the area. The fact that flammable and explosive concentrations of methane are currently exhibiting surface venting in the south central portion of the area gives unassailable credence to the extreme safety hazard to the residents in the area.

While this appeal primarily addresses safety concerns, the existence of potential health hazards cannot be ignored. In addition to the presence of methane and hydrogen sulfide, an additional highly toxic gas, hydrogen selenide, has been detected and is being investigated further. I intend to remain involved in analyzing these hazards so that State government can provide information and assistance to the County and its residents as needed. In the meantime the combination of safety and health hazards presents a situation that is immediate, highly dangerous, and unique.

Thus I would submit that the severity and magnitude of the situation are beyond the response capabilities of the State of Wyoming and its affected local governments. I therefore respectfully request favorable consideration of this appeal, recognizing that the situation does not have characteristics normally associated with more traditional natural disasters. This circumstance, however, does not alter the human tragedy and loss to those families living in the subdivision.

Thank you for your consideration of this appeal for a group of Wyoming citizens who face potentially tragic consequences in terms of safety, health, and economic loss. Please contact me if you should have any questions.

27a

With kind personal regards, I am

Very truly yours,

/s/ Mike Sullivan  
MIKE SULLIVAN  
Governor

MS:uff

FEDERAL EMERGENCY MANAGEMENT AGENCY  
WYOMING  
(FEMA-3092-EM)

NOTICE OF EMERGENCY AND  
RELATED DETERMINATIONS

AGENCY: Federal Emergency Management Agency

ACTION: Notice

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Wyoming, (FEMA-3092-EM), dated September 4, 1987, and related determinations.

DATED: September 4, 1987

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter of August 4, 1987, the President declared an emergency under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Public Law 93-288), as follows:

I have determined that the potential threat of fire and explosion caused by the presence of methane gas in the Rawhide Village/Horizon Subdivision in Campbell County, Wyoming is of sufficient severity and magnitude to warrant an emergency declaration under PL 93-288. I therefore declare that such an emergency exists in the State of Wyoming.

You are hereby authorized to provide temporary housing assistance as required beginning on the date

of my declaration of an emergency. You are further authorized to allocate, from funds available for those purposes, such amounts as you find necessary.

Notice is here by given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. David P. Grier IV of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Wyoming to have been affected adversely by this declared emergency.

Rawhide Village/Horizon Subdivision located in Campbell County for assistance as authorized by the President's declaration.

/s/ Julius W. Becton, Jr.  
JULIUS W. BECTON, JR.  
Director

(Catalog of Federal Domestic Assistance No. 83.516,  
Disaster Assistance.)

(Billing Code 6718-02.)